

CSD 1160 [05/15/03]

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**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA  
 325 West "F" Street, San Diego, California 92101-6991

In Re

DARREN KELLERMAN,

Debtor.

BANKRUPTCY NO. 09-13418-JM7

BAYVIEW LOAN SERVICING, LLC,

Moving Party.

RS NO. EGS-1

DARREN KELLERMAN;  
 RONALD E. STADTMUELLER, Trustee,

Respondent(s)

CHAPTER 7

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

☒ **REAL PROPERTY** ☐ **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on 09/04/09.
2. Procedural Status:
  - a. ☒ Name of Trustee Appointed (if any): RONALD E. STADTMUELLER
  - b. ☐ Name of Attorney of Record for Trustee (if any):
  - c. ☐ (Optional) Prior Filing Information:  
 Debtor has previously filed a Bankruptcy Petition on: \_\_\_\_\_  
 If applicable, the prior case was dismissed on: \_\_\_\_\_
  - d. ☐ (If Chapter 13 case): Chapter 13 Plan was confirmed on \_\_\_\_\_ or a confirmation hearing is set for \_\_\_\_\_.

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:
  - a. Street address of the property including county and state:  
  
 COUNTY OF TULSA  
 1533-1537 E. 11<sup>TH</sup> ST.,  
 TULSA, OK 74120
  - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved): Condominium
  - c. Legal description of property is attached as follows:  
  
 LOTS FIFTEEN (15) AND SIXTEEN (16), BLOCK ELEVEN (11), LESS AND EXCEPT THE SOUTH 2.2 FEET OF LOT 15, PARK DALE ADDITION, TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

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- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit \_\_\_\_.
- e. \*Fair market value of property as set forth in the Debtor's schedules: \$98,000.00.
- f. \*Nature of Debtor's interest in the property: Original borrower.

2. ☐ The following personal property is the subject of this Motion (*describe property*):

- a. Fair market value of property as set forth in the Debtor's schedules: \$\_\_\_\_\_.
- b. Nature of Debtor's interest in the property:

3. \*Fair market value of property according to Movant: \$98,000.00

4. \*Nature of Movant's interest in the property: First Mortgage recorded July 16, 2007.

5. \*Status of Movant's loan:

- a. Balance owing on date of Order for Relief: \$125,733.97
- b. Amount of monthly payment: \$ 1,591.00
- c. Date of last payment: 05/09
- d. If real property,
- i. Date of default: 06/09
- ii. Notice of Default recorded on: n/a
- iii. Notice of Sale published on: n/a
- iv. Foreclosure sale currently scheduled for: n/a
- e. If personal property,
- i. Pre-petition default: \$\_\_\_\_\_ No. of months: \_\_\_\_\_
- ii. Post-petition default: \$\_\_\_\_\_ No. of months: \_\_\_\_\_

6. (If Chapter 13 Case, state the following:)

- a. Date of post-petition default: \_\_\_\_\_
- b. Amount of post-petition default: \$\_\_\_\_\_

7. Encumbrances:

- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1 <sup>st</sup> : BAYVIEW	\$108,800.00	\$6,364.00	4	\$3,182.00	2
2 <sup>nd</sup> :					
3 <sup>rd</sup> :					
Totals for all Liens:	\$108,800.00	\$6,364.00	4	\$3,182.00	2

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant: Cost of Sale: \$7,840.00
- ☒ See attached page, if necessary. See Movant's Statement of Indebtedness

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## 8. Relief from the automatic stay should be granted because:

- a. ☒ Movant's interest in the property described above is not adequately protected.
- b. ☒ Debtor has no equity in the ☒ real property ☐ personal property described above and such property is not necessary to an effective reorganization.
- c. ☐ The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or \_\_\_\_\_ days as ordered by this court) have passed since entry of the order for relief in this case, and
- i. the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
- ii. the Debtor/Trustee has
- (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
- (2) ☐ commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- d. ☒ \*Other cause exists as follows (*specify*): ☐ See attached page.
- (1) There is no equity in the property.
- (2) Debtor intends to surrender the subject property.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following: See attached Declaration of John Stamm.

1. ☒ Other relevant evidence: Statement of Indebtedness
2. ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief as requested.
- ☒ Other: The 10 day stay provided by Bankruptcy Rule 4001(a)(3) be waived.

EDWARD G. SCHLOSS

Dated: November 19, 2009
  
 Edward G. Schloss for Movant

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